

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
RONALD BEATON,	:	LS0410191REB
RESPONDENT.	:	

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Division of Enforcement Case No. 01REB249

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

The rights of a party aggrieved by this Decision to petition the department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 1st day of December, 2005.

Peter A. Sveum  
Member of the Board  
Real Estate Board

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST

RONALD BEATON,  
RESPONDENT.

:  
:  
:  
:  
:

Case No. LS0410191REB

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PROPOSED DECISION AND ORDER

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The parties to this action for purposes of §227.53, Wis. Stats., are:

Ronald Beaton  
6525 Grand Teton Plaza #A  
Madison, WI 53719

Real Estate Board  
P.O. Box 8935  
Madison, WI 53708-8935

Department of Regulation & Licensing  
Division of Enforcement  
P.O. Box 8935  
Madison, WI 53708-8935

**PROCEDURAL HISTORY**

A hearing in the above-captioned matter was held on January 26-27, 2005, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by Attorney Mark Herman. Attorney H. Dale Peterson appeared on behalf of Mr. Beaton.

Based on the entire record in this case, the undersigned administrative law judge recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. Ronald V. Beaton (dob 5/31/43) is duly licensed as a real estate broker in Wisconsin (License #90-18147). His license was first granted on May 20, 1977.
2. Mr. Beaton's latest address on file with the Department of Regulation and Licensing is 6525 Grand Teton Plaza #A, Madison, Wisconsin.
3. On or about June 7, 2001, Mr. Beaton signed an offer to purchase vacant land as a buyer. A business partner of Mr. Beaton's also signed the offer to purchase on or about that date; however, the business partner's name was subsequently removed from the transaction.
4. On or about June 7, 2001, Mark Hasler, an employee of DSI Real Estate Group, Inc., presented Mr. Beaton's offer to purchase to the listing broker, Sanford DeWitt, an employee of First Weber.

5. On or about June 8, 2001, the seller Windsor Development Corp., by and through its president, John DeWitt, made a counter-offer to Mr. Beaton, which was accepted on or about June 10, 2001.
6. On or about September 11, 2001, Mr. Beaton signed an amendment to the offer to purchase, which included the following:

“Buyer requires and Seller agrees that DSI Real Estate Group, Inc., shall be paid a commission by Seller in the amount of 5% of the selling price. Buyer, as a licensed Real Estate Broker discloses that Buyer shall receive a portion of that commission. (50%)”
7. On or about September 12, 2001, the seller Windsor Development Corp., by and through its president, John DeWitt, signed the amendment to the offer to purchase.
8. Mr. Beaton received fifty percent (50%) of DSI Real Estate Group, Inc.’s commission, which was five percent (5%) of the selling price. He received a check in the amount of \$10,000.00.

### **CONCLUSIONS OF LAW**

1. The Real Estate Board has jurisdiction in this matter pursuant to §452.14, Wis. Stats.
2. As the buyer of vacant land as set forth in Finding of Fact 3, Mr. Beaton acted as a principal in a real estate transaction within the meaning of § RL 24.05 (4), Wis. Admin. Code.
3. By having received a portion of the proceeds paid by the seller as set forth in Finding of Fact 8 , Mr. Beaton accepted a commission within the meaning and in violation of § RL 24.05 (4), Wis. Admin. Code.

## **ORDER**

**NOW THEREFORE IT IS HEREBY ORDERED** that Ronald Beaton is **REPRIMANDED**.

**IT IS FURTHER ORDERED** that Mr. Beaton complete a minimum of sixteen class hours of continuing education in the areas of real estate sales and ethics to be approved in advance by the Real Estate Board.

**IT IS FURTHER ORDERED** that Mr. Beaton pay the assessed costs in this matter pursuant to sec. 440.22, Wis. Stats.

## **OPINION**

John R. DeWitt is the president of Windsor Development Corporation (Windsor). In 2001, Windsor owned several parcels of real estate in a development known as Holland Fields. On or about June 7, 2001, Ronald Beaton signed an offer to purchase "Lot 2" in Holland Fields. His business partner also signed the offer to purchase on or about that date, but the partner's name was subsequently removed from the transaction.

On or about June 7, 2001, Mark Hasler, an employee of DSI Real Estate Group, Inc., presented Mr. Beaton's offer to purchase to the listing broker, Sanford DeWitt, an employee of First Weber. Following that, on or about June 8, 2001, the seller Windsor Development Corp., by and through its president, John DeWitt, made a counter-offer to Mr. Beaton, which he accepted on or about June 10, 2001.

Mr. Beaton then signed an amendment to the offer to purchase on or about September 11, 2001, which included the following:

"Buyer requires and Seller agrees that DSI Real Estate Group, Inc., shall be paid a commission by Seller in the amount of 5% of the selling price. Buyer, as a licensed Real Estate Broker discloses that Buyer shall receive a portion of that commission. (50%)"

Thereafter, on or about September 12, 2001, Windsor by and through its president, John DeWitt, signed the amendment to the offer to purchase. As a result of that amendment, Mr. Beaton received fifty percent (50%) of DSI Real Estate Group, Inc.'s commission, which was five percent (5%) of the selling price.

There are several items at issue in this case. The first is whether Mr. Beaton was acting as a principal in a real estate transaction at the time he purchased Holland Fields Lot 2. Assuming, *arguendo*, that Mr. Beaton acted as a principal, the second issue is whether he accepted a commission without the consent of the parties to the transaction. The third issue surrounds the timing of the parties' consent, more specifically, whether the consent was provided at the time the offer to purchase was executed. Each of these issues will be addressed in turn.

Section RL 24.05 (4) of the Wisconsin Administrative Code provides that:

A licensee acting as a principal in a real estate or business opportunity transaction shall not accept any commission, rebate, or profit on expenditures made by any other party to the transaction without the written consent of the party. The written consent shall be provided no later than the party's execution of the offer to purchase, option, exchange agreement, lease or other contract creating an interest in the real estate or business opportunity.

Mr. Beaton argues that he was not acting as a principal in this real estate transaction. Although he readily admits that he is a licensed real estate broker, he maintains that he did not act as a broker in this transaction. Instead, he argues that Mr. Hasler acted as the broker in this matter because it was Mr. Hasler who wrote and presented the offer from Mr. Beaton to John DeWitt. Mr. Beaton further argues that he assigned his interest in this transaction to Holland Fields Lot 2, a limited liability company in which he has a fifty percent (50%) ownership interest. As a consequence, he maintains that he was

lawfully entitled to a “fee split” under s. 452.19, Wis. Stats.

Section 452.19, Wis. Stats., provides that “[n]o licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter or as compensation for a referral or as a finder’s fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business in another state, a territory or possession of the United States or a foreign country.” Mr. Beaton argues that under this provision he could lawfully accept the so-called “fee split” from the DSI Real Estate Group, Inc., because he was not acting as a principal in this matter, but, rather, was acting as a licensee and therefore eligible to receive such a fee under s. 452.19, Wis. Stats.

Mr. Beaton cannot have it both ways. On the one hand, he argues that he did not act as a principal, but, on the other, insists that by virtue of being a licensee he is entitled to receive a fee or commission from this transaction. It is disingenuous of Mr. Beaton to suggest that he did not act as a principal in this matter. To begin, it is he, a licensed broker, who signed the offer to purchase. And although he utilized the services of Mr. Hasler to assist him in drafting the offer to purchase, he nevertheless expected to receive a fee or commission from this transaction as his demand to that effect just days before the closing demonstrates. The assignment of his interest in the property to a limited liability company does not mitigate the fact that he acted as a principal in the first instance. Moreover, as half owner of the limited liability company to which he assigned his interest, he is plainly one of its principals and only able to receive a fee or commission through it because of his status as a licensee. To therefore insist that he was not a principal from the outset of this transaction is unreasonable.

While it is true that s. 452.19, Wis. Stats., permits the payment of a fee or commission to a licensee, that provision must also be read in light of s. RL 24.05 (4), Wis. Admin. Code., which provides that *before* a licensee may act as a principal in a real estate transaction and accept a commission, he or she must get the written consent of the parties no later than the offer to purchase. No such consent was obtained at the time the offer to purchase was executed in this matter. Indeed, it was not until September 10, 2001, three days before the closing on this property, that such a demand was even made. If, as Mr. Beaton suggests, such a demand was really just a means of being compensated for certain contingencies in the offer not having been met, then the purchase price should have and could have been adjusted to reflect that. But instead, he was paid money as a direct result of being a licensed real estate broker while simultaneously acting in his capacity as a principal in the transaction, contrary to the real estate laws.

By accepting the \$10,000.00 from the DSI Real Estate Group without first disclosing to John DeWitt or to his company that he, Mr. Beaton, was a licensed real estate broker at the time the offer to purchase was executed is contrary to s. RL 24.05 (4), Wis. Admin. Code. If Mr. Beaton had wanted to receive a commission, he was obligated to disclose at the outset of the transaction, that is, when the offer to purchase was executed by the parties, that he was acting both as a principal in the transaction and also as a licensed real estate broker. His efforts to gain the commission at the very end of the transaction rather than at its outset were not appropriate. In fact, they appear to have been an end-run around his failure to have made the required disclosure.

Mr. Beaton’s actions demonstrate that he was acting as a principal at the time he agreed to purchase Holland Fields Lot 2. However, he did not disclose his dual role as both principal and real estate broker to Mr. DeWitt at the required time. Nor did he obtain Mr. DeWitt’s consent to act in that dual capacity. Nevertheless, Mr. Beaton expected to receive and ultimately did receive a commission as a direct result of this transaction in violation of the real estate provisions regarding self-dealing.

The question therefore remains as to what the appropriate form of discipline is for Mr. Beaton. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969).

Mr. Beaton has been a licensed real estate broker for over twenty-five years. During that time, he has never been subjected to discipline by the Real Estate Board. However, disciplinary measures are necessary in this case in order to rehabilitate Mr. Beaton’s real estate practices and also to deter other licensees from acting in a similar manner. A reprimand and remedial education will serve to accomplish that end.

In addition to the aforementioned discipline, the imposition of costs against Mr. Beaton has been recommended. Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against a respondent is a discretionary decision on the part of the Real Estate Board and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding. Accordingly, the assessable costs of this proceeding should be imposed on Mr. Beaton.

Dated at Madison, Wisconsin, this 17<sup>th</sup> day of June, 2005.

STATE OF WISCONSIN  
DEPARTMENT OF REGULATION & LICENSING  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, Wisconsin 53708  
Telephone: (608) 266-5836  
FAX: (608) 267-0644

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Jacquelynn B. Rothstein  
Administrative Law Judge